



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Wm. J. Lawson
Secretary of State
Austin, Texas

Attention: Mr. Will Mann Richardson

Opinion No. 2-3385

Re: Are the owners of the preferred stock of the Farmers and Consumers Company required to be producers or engaged in the production of agricultural products before they are entitled to vote regarding the affairs of such company?

Dear Sir:

Your recent request for an opinion of this Department on the above stated question has been received.

We quote from your letter as follows:

"Recently the above named (Farmers & Consumers Company) corporation was formed under the Cooperative Marketing Act with its principal place of business in Fort Worth, Texas. It stated that it was to have an authorized capital stock of \$1,000,000.00. Since it was under the Cooperative Marketing Act, it did not have to show this office whether any of its capital stock was subscribed or paid. We have now been furnished with an amendment increasing the authorized capital stock to \$5,000,000.00 for which the correct \$2.50 filing fee has been paid this Department.

"The amendment appears to be in the proper form, but its stock is divided into two classes -- 100,000 shares of common stock and 25,000 shares of preferred stock. Both common and preferred are voting stock and both classes of stock receive dividends not to exceed 8% per annum, the only

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difference between the common and preferred stock is that the preferred may be redeemed or retired upon 60 days notice and that it shall be preferred as to 'assets and the dividends cumulative'.

"The plan of operation is to sell the common stock to producers, but the preferred stock may be sold to non-producers. So far as we know, this is the first time the question has arisen as to preferred stock having the right to vote and being sold to non-producers.

"According to Article 5743 of the Revised Civil Statutes, members of the corporation or common stockholders must be producers. Article 5750, however, provides 'any association organized with stock under this law may issue preferred stock with or without the right to vote'.

"The question in this connection is whether, when the preferred stock has the right to vote, its owners are therefore members of the corporation and must be producers, or whether being preferred stockholders they need not be producers.

"Since the project is the largest one to be submitted to this Department under the Cooperative Marketing Act, we request an opinion from your Department on this point before the charter amendment is approved. The charter amendment is attached hereto for your consideration."

Article 5743, Vernon's Annotated Civil Statutes reads as follows:

"(a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the leasees and tenants of land used for the production of such products and any lessors and land owners who receive as rent part of the crop raised on the leased premises. (b) If a member of a non-stock association be other than a natural person,

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such member may be presented by any individual, associate officer or member thereof, duly authorized in writing. (c) Any association as defined in Article 5738 (c) may become a member or stockholder of any other association or associations organized hereunder."

Article 5744, Vernon's Annotated Civil Statutes, provides in part as follows:

"... If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided the Articles of Incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and nature and extent of the preference and privileges granted to each. . ."

Article 5750, Vernon's Annotated Civil Statutes provides in part:

"... Any association organized with stock, under this law, may issue preferred stock, with or without the right to vote..."

Article 5738, Vernon's Annotated Civil Statutes among other things provides:

"(1) That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein . . ."

It is apparent that under Article 5743, supra, common stock can be issued only to persons engaged in the production of agricultural products to be handled by or through the association, etc. Considering Articles 5744 and 5750, supra, together, it is evident that companies or associations organized under the "Cooperative Marketing Act" may issue preferred stock, with or without the right to vote. It will be noted

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that the "Cooperative Marketing Act" does not require the owners of preferred stock in associations or companies organized under the act to be producers or engage in the production of agricultural products to be handled by or through the association or company. But, as above stated such associations or companies may issue preferred stock, with or without the right to vote. The charter amendment of the Farmers and Consumers Company reads in part as follows:

"Said shares are to be divided into two (2) classes, to-wit: Common and Preferred, of which 100,000 shares shall be common and 25,000 shares shall be preferred. Each holder of common stock and each holder of preferred stock shall be allowed one vote regardless of the amount of stock owned by such share holder. . ."

In view of the foregoing statute, the Farmers and Consumers Company may issue preferred stock with or without the right to vote, but it is apparent from the above quoted portion of the charter amendment that the holders of the preferred stock are allowed to vote. Therefore, the above stated question is respectfully answered in the negative.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly,

APPROVED APR 18, 1941

ATTORNEY GENERAL OF TEXAS

George A. Allen
FIRST ASSISTANT
ATTORNEY GENERAL

By

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APPROVED
OPINION